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IN THE

Supreme Court of the United States

OCTOBER TERM—1946

NOS. 391, 392 AND 393

SAMUEL OKIN,

Petitioner,

against

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

Brief of Electric Bond and Share Company in Opposition to Petition for Writs of Certiorari to the United States Circuit Court of Appeals for tne Second Circuit

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JOHN F. MACLANE,
Counsel for Electric Bond and Share Company.

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We accept as adequate for present purposes the statement of the case and of the questions presented as set forth in the brief of the Securities and Exchange Commission (Commission), the respondent herein. This brief is filed in order that this Court may be informed that Electric Bond and Share Company (Bond and Share,) whose interests are directly involved in this matter, opposes the granting of the writs requested by the petitioner.

That Section 26(c) of the Public Utility Holding Company Act of 1935 (Act) prohibits the invalidation of any otherwise valid debt created before the passage of the Act is a proposition advanced by petitioner to which we

most heartily subscribe and which we regard as the plain intent of the section. Bond and Share has consistently taken and adheres to the position that the debts funded by the notes involved in the orders of the Commission in question here were valid when made and are thus within the purview of Section 26. We must recognize, however, that the Commission has posed questions as to the validity, or position in any reorganization of American & Foreign Power Company Inc. (Foreign Power), of this debt and has insisted upon a determination of those questions before any payment of the debt is permitted.

As a solution not only of these specific questions but of the general problems created by the requirements of Section 11 of the Public Utility Holding Company Act of 1935 concerning the structure of holding companies and holding company systems, Bond and Share and Foreign Power have filed with the Commission a Plan of Reorganization of Foreign Power under Section 11(e) of the Act, pursuant to which Bond and Share proposes to surrender its entire interest in Foreign Power, including the notes in question here, in exchange for cash, debentures and common stock of a recapitalized Foreign Power.

Consequently, it seems to us that the sole question here involved is whether Section 11(b) of the Act, relating to the reorganization of holding companies and holding company systems, authorizes the Commission to inquire into the status of debt claims involved in any such reorganizations and into the fairness and equitableness of their solution in the proposed reorganization. If Section 11(b) has any meaning, this question can be answered only in the affirmative, and the procedure adopted by the Commission here maintains the status quo while at the same

time has allowed Foreign Power to refund a debt claim upon favorable terms.

Petitioner's entire argument concerning the application of Section 26(c) is based on the assumption that the debt owed by Foreign Power to Bond and Share is valid. While we think that his assumption is entirely correct, it is the very question which is awaiting solution by the compromise method proposed in the 11(e) Plan, and is not and cannot be presented here for determination or even used as a basis for decision.

Respectfully submitted,

JOHN F. MACLANE,
Counsel for Electric Bond and Share Company.